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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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BLAKELY SOKOLOFF TAYLOR & ZAFMAN
12400 WILSHIRE BOULEVARD
SEVENTH FLOOR
LOS ANGELES, CA 90025-1030

EXAMINER

LIPMAN, JACOB

ART UNIT PAPER NUMBER

2134

DATE MAILED: 09/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/675,976

Applicant(s)

SHIPPY ET AL.

Examiner

Jacob Lipman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30, 39 and 40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30, 39 and 40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 June 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The substitute drawings filed 24 June 2005 have not been entered because it does not conform to 37 CFR 1.125(b) and (c) because the statement as to a lack of new matter under 37 CFR 1.125(b) is missing.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the payload of a data block of a data stream".

There is insufficient antecedent basis for this limitation in the claim. The previously mentioned payload of a data block did not indicate that it was of a data stream, and it is unclear if this payload is the same, or if the data stream limitation applied to the first mention of the payload.

The term "when necessary" in claim 3 is a relative term which renders the claim indefinite. The term "when necessary" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

The term "sufficient" in claim 3 is a relative term which renders the claim indefinite. The term "sufficient" is not defined by the claim, the specification does not

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provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The examiner notes that terms such as necessary and sufficient are relative based on what a user might desire. If applicant wishes to claim both a tag that includes a source of said portion of said payload as well as a tag that does not, the examiner suggests writing two separate claims.

4. Claims 9-16 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: steps leading to the data block in claim 9 to be a decrypted data block. A data block and decrypted data block are not different. The claim seems to be referencing a method step that has not been claimed. The term "decrypted data block" will be treated as "data block" in this office action.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 9-16, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Cooper et al., US Patent number 5,757,908.

With regard to claims 9 and 14, Cooper discloses a computer (column 3 lines 50-53), which encrypts a payload (column 3 lines 55 -57), replaces a portion of the payload with a tag (column 3 lines 57-63) that identifies a decryption key (column 4 lines 16-20),

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and sets a flag in a header that indicates that the payload has the tag (column 17 lines 17-23). Cooper discloses that the payload can be sent over a network (Column 9 lines 13-18).

With regards to claim 10, Cooper discloses encrypting the portion (column 3 lines 57-59).

With regard to claims 11-13, Cooper discloses that in response to finding the data block, the file management program loads the decryption key and decrypts the file (column 4 lines 10-22).

With regard to claim 15, cooper discloses the system can be a network of computers (column 21 lines 12-44).

With regard to claim 16, Cooper discloses the tag includes a data-stream identifier having information to access a key (column 4 lines 10-15).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-8, 17-30, and 39-40 rejected under 35 U.S.C. 103(a) as being unpatentable over Schulhof et al., USPN 5,572,442, in view of Cooper.

As mentioned above, Cooper discloses a computer (column 3 lines 50-53), which encrypts a payload (column 3 lines 55 -57), replaces a portion of the payload with a tag (column 3 lines 57-63) that identifies a decryption key (column 4 lines 16-20), and sets a

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flag in a header that indicates that the payload has the tag (column 17 lines 17-23). Cooper discloses that the payload can be sent over a network (Column 9 lines 13-18). Cooper does not disclose that the payload is decrypted after being received from a protocol-specific device (third party). Cooper does not disclose where the payload is received from. Schulhof discloses that media to be stored on portable media is often received from a third party and is sent encrypted over a communication channel, specifically in Schulhof, cable television (column 11 lines 42-55). The examiner also takes official notice that information is frequently sent encrypted over communication channels, such as the Internet. It would have been obvious for one of ordinary skill in the art to use Schulhof's secure sending of information to send Cooper's software package from the software designer to the software vendor to keep it secure.

Response to Arguments

9. Applicant's arguments filed 6 April 2005 have been fully considered but they are not persuasive.

With regard to applicant's argument that the payload in Cooper is not a stream, the examiner added a reference to where Cooper discloses the payload can be sent over a network (Column 9 lines 13-18). The examiner maintains that the data can also stream from a disk, and flow from it to the PC.

Conclusion

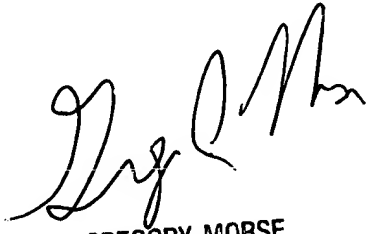
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacob Lipman whose telephone number is 571-272-3837. The examiner can normally be reached on M-Th 7 AM-3 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Morse can be reached on 571-272-3838. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JL



GREGORY MORSE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100